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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
HAO ZHANG,
Defendant.

CR 15-00106 EJD/HRL

STIPULATED INTERIM
PROTECTIVE ORDER

(Modified
by Court)

WHEREAS during the course of discovery in the above-captioned criminal case, the United States may produce documents and other items containing information that is claimed by Avago Technologies and Skyworks Solutions, Inc., to be kept protected as a possible "trade secret" (within the meaning of 18 U.S.C. § 1839(3)); and

WHEREAS the United States and defendant HAO ZHANG ("ZHANG") deem it appropriate for the purpose of facilitating pretrial negotiations and to provide for the protection of such information without agreeing between them that the specific information is in fact intended to be kept secret or is a trade secret, and with the further understanding that nothing in this stipulated protective order creates any presumption regarding whether the specific information is intended to be kept secret or is a trade secret, and lastly, preserving defendant ZHANG's rights to challenge any such designation at a later time;

1 IT IS HEREBY STIPULATED AND AGREED by and between the United States and defendant
2 ZHANG and his counsel that the following definitions and procedures will govern the designation and
3 handling of material and other information produced by the United States during pretrial negotiations,
4 while reserving the question of how such material and information should be handled at trial, and during
5 pre- or post-trial hearings for a future time.

6 1. Definitions:

7 a. "Confidential Material" shall mean information that the Government contends is intended to be
8 kept secret or is a trade secret within the meaning of 18 U.S.C. § 1839(3).

9 b. "Discovery Material" shall mean all materials disclosed by the United States during discovery
10 in this case.

11 2. The United States may designate Discovery Material as Confidential Material to the extent that
12 it believes in good faith that the information or material is or may be Confidential Material as defined in
13 paragraph 1(a) above. Any labeling, segregation, or designation of Discovery Material as "Confidential
14 Material" should be made, whenever possible, in the case of written, tangible, or documentary Discovery
15 Material, at the time that Discovery Material is produced or made known to defendant ZHANG, by
16 stamping each page "CONFIDENTIAL" in a manner that is readily distinguishable from any pre-existing
17 confidential designation or by otherwise manifesting the intention that the Discovery Material be
18 considered Confidential Material. Computer memory storage materials such as tapes, diskettes, hard
19 drives, or other memory media containing Discovery Material deemed by the United States as containing
20 Confidential Material shall be labeled on the outside of the media as "CONFIDENTIAL." The
21 Government shall maintain unlabeled or "clean" copies of all discovery material that it has labeled
22 "CONFIDENTIAL" under this stipulated order for the future use by the parties in subsequent
23 proceedings.

24 3. Discovery Material designated as "CONFIDENTIAL" shall be retained by defendant
25 ZHANG'S counsel in the above-captioned case and furnished, at this time, to no one other than
26 defendant ZHANG's counsel in the above-captioned case, defendant ZHANG, the staff supporting
27 ZHANG's counsel in the above-captioned case such as interpreters, paralegal assistants, and secretarial,
28 stenographic, and clerical employees who are working on this case under the direction of defendant

1 ZHANG's counsel and to whom it is necessary that the materials be disclosed for purposes of the defense
2 of this case. Defendant ZHANG's counsel may further show documents to any custodian listed on the
3 face of such document but shall not leave any such confidential material with the custodian. Defendant
4 ZHANG's counsel may also show documents to any potential witness that they deem necessary for the
5 defense of this matter but shall not leave any such confidential material or summary of the confidential
6 material with the potential witness. In the event that the defendant or his counsel wishes to consult an
7 expert, any custodian listed on the face of such document, or any potential witness that they deem
8 necessary for the defense of this matter regarding these materials, the procedure for doing so is addressed
9 in paragraph 8 of this agreement. All such material shall be kept in the offices of defendant ZHANG's
10 counsel in the above-captioned case and neither this material nor any copies of this material shall leave
11 that office (including via electronic transmission of any sort) for any purpose except submission in
12 camera to the Court, except that counsel may include the material in emails among themselves as
13 necessary for the defense of this matter, provided that when confidential materials are attached to an
14 email between counsel, the confidential materials shall be encrypted. Electronic copies of this material
15 may be stored on stand-alone, password-protected laptop computers belonging to defendant ZHANG's
16 counsel. Moreover, no such material shall be downloaded to or maintained by defendant ZHANG's
17 counsel on a portable storage device such as a thumb drive or removable external hard drive, except by
18 defendant ZHANG's counsel of record, and provided that said thumb drive or external storage device
19 shall be encrypted. However, should defendant ZHANG be incarcerated before the resolution of this
20 indictment, his counsel may bring the designated confidential material to the facility in which he is
21 incarcerated to assist in the defendant's preparation but shall not leave any such confidential material
22 with the defendant. All such material shall be used solely for the purpose of conducting pre-trial, trial,
23 and appellate proceedings in this case and for no other purpose whatsoever, and shall not be used for the
24 economic benefit of defendant ZHANG or for the benefit of any third party. All motions which contain
25 any of the material labeled "CONFIDENTIAL" and which are filed with the Court shall be filed and
26 kept under seal until further order of the Court. Confidential Material filed under seal shall be filed
27 with the Clerk of the Court in sealed envelopes or boxes prominently marked with the caption of this
28 case and the notation:

1 "TO BE FILED UNDER SEAL"

2 Contains Confidential Material

3 To Be Opened Only As Directed By The Court

4 4. The recipient of any Confidential Material that is provided under this Stipulated Interim
5 Protective Order shall keep such information in a manner reasonably intended to preserve and
6 maintain the confidentiality of the information and shall not disclose such information to any
7 individuals except as authorized by this Stipulated Interim Protective Order.

8 5. At the conclusion of the above-captioned case, defendant ZHANG and his counsel in the
9 above-captioned case agree to the return of all Confidential Material to the United States, and
10 defense counsel will destroy all work product that contains Confidential Materials, except as directed
11 by the Court.

12 6. Nothing herein shall prevent defendant ZHANG from using the Confidential Material or
13 from referring to, quoting, or reciting from any information contained in such Confidential Material
14 in connection with pleadings or motions filed in this case, provided that such materials be filed under
15 seal ~~and/or submitted to the Court for in camera inspection~~. The use of Confidential Material at trial
16 or pre- or post-trial hearing will be resolved at or before the time of the trial or hearing.

17 7. Should defendant ZHANG dispute the propriety of any designation of Discovery Material
18 as Confidential Material, his counsel shall notify the United States in writing. Within fourteen
19 business days from receiving the notice, the United States shall respond to the notice in writing. If,
20 after this exchange of correspondence, defendant ZHANG and the United States cannot resolve their
21 dispute, they may apply to the Court to do so. The burden shall be on the government to prove that
22 the material qualifies as Confidential Material. During the pendency of the dispute and any court
23 resolution thereof, including an appeal of the Court's decision on such motion, the discovery
24 material shall be deemed "CONFIDENTIAL" as designated and shall be covered by the provisions
25 of this Stipulated Interim Protective Order. The parties understand that, as this Stipulated Interim
26 Protective Order is primarily intended to facilitate pretrial negotiations, the defendant and his
27 counsel may choose not to formally challenge the Government's designation of certain material as
28 confidential at this stage in the proceedings. Such a failure to challenge the confidential designation
does not constitute a waiver on the defendant's part of either the ability to challenge that confidential

1 designation or the ability to contest that certain portions of the designated confidential material
2 constitutes "trade secret" information under 18 U.S.C. § 1839(3).

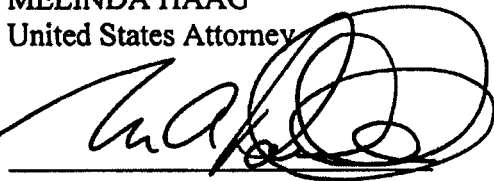
3 8. At such time as the defendant ZHANG retains an expert or experts to assist in the review
4 of the Confidential Material, or shows Confidential material to any custodian listed on the face of
5 such document, or to any potential witness that they deem necessary for the defense of this matter
6 regarding these materials, each such person shall execute an Acknowledgment in the form attached
7 to this Stipulation ~~which shall then be submitted to the Court ex parte and in camera by the~~
8 ~~defendant.~~ The Defendant ZHANG shall not be required to provide said Acknowledgment, or the
9 identity of the expert who signed it, to the United States, unless so ordered by the Court. The United
10 States retains the right to request that the Court authorize such disclosure. Nothing in this paragraph
11 relieves the defendant of the discovery obligations contained in Federal Rule of Criminal
12 Procedure 16(b)(1)(C), nor does the United States waive any rights thereunder by entering into this
13 stipulation. By signing and agreeing to the terms of this Stipulated Interim Protective Order, no
14 person shall be deemed to have conceded that any material has been properly designated as
15 confidential.

16 9. Nothing in this order shall preclude the United States or defendant ZHANG from applying
17 to the Court for further relief or modification. The parties' agreement to enter into this Stipulated
18 Interim Protective Order at this time is for the purpose of pretrial negotiations, and is not a
19 concession by the defendant that the terms contained herein would be appropriate should the case
20 proceed beyond that stage.

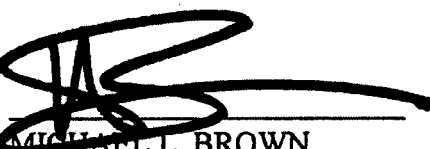
21 10. Willful violation of this Stipulated Interim Protective Order may be punishable by
22 contempt of court, whatever other sanction the Court deems just, or any other sanctions or
23 combination of sanctions which are legally available.

1 DATED: 8/18/15

2 MELINDA HAAG
3 United States Attorney

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6 MATTHEW A. PARRELLA
7 DAVID R. CALLAWAY
8 Assistant United States Attorneys

9 DATED: 8-16-15

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12 MICHAEL L. BROWN
13 Attorney for defendant Zhang

14 IT IS SO ORDERED


15 DATED: 8/19/15

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18
19 HOWARD R. LLOYD
20 United States Magistrate Judge

1 AGREEMENT TO BE BOUND BY
2 STIPULATED INTERIM PROTECTIVE ORDER

3 The undersigned, defendant Hao Zhang, and his counsel in the above-captioned case, CR 15-
4 00106 EJD/HRL, hereby acknowledge that they have received a copy of the Stipulated Interim
5 Protective Order in the above-captioned case, have read, understand, and agree to be bound by all of
6 the provisions thereof, and hereby submit to the jurisdiction of the United States District Court for the
7 Northern District of California for the purposes of enforcement of the terms of the Stipulated Interim
8 Protective Order and the punishment of any violations thereof.
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11 DATED: 8-16-15

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14 MICHAEL L. BROWN
15 Attorney for defendant Zhang

16 DATED: 8/17/15

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19 HAO ZHANG
20 Defendant
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2 ACKNOWLEDGMENT OF STIPULATED INTERIM PROTECTIVE ORDER IN: UNITED
3 STATES v. HAO ZHANG,
4 CR 15-00106 EJD/HRL

5 The undersigned hereby acknowledges receipt of a copy of the Stipulated Interim Protective
6 Order issued in United States v. Hao Zhang, CR 15-00106 EJD/HRL, has read, understands, and
7 agrees to the terms of the Stipulated Protective Order, and hereby submits to the jurisdiction of the
8 United States District Court for the Northern District of California for the purposes of enforcement of
9 the terms of the Stipulated Interim Protective Order and the punishment of any violations thereof.

10 Further, the undersigned understands that the sole permissible use of the Confidential Material
11 provided and viewed under the provisions of this Stipulated Interim Protective Order is to assist in the
12 preparation of the defendant, Hao Zhang's, defense to CR-15-00106 EJD/HRL.

13 The undersigned understands that no further use may be made of the Confidential Material
14 whatsoever, and that any willful violation of the Stipulated Interim Protective Order may result in
15 criminal and civil penalties.
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17
18 DATED:

19
20 Signature

21 Thomas J. Nolan

22 Printed Name

23
24 Witnessed by:

25 Melanie E. Cade

26 600 University Ave
Street Address

27 Palo Alto, CA 94301
City, State, and Zip Code

28 650-326-2980
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